Supreme Court, U. S.
FILED
MAR 27 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-1274

PEGGY JEAN THOMPSON,

PETITIONER,

VS.

STATE OF ALABAMA,

RESPONDENT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CHARLES A. GRADDICK
Attorney General
250 Administrative Building
64 North Union
Montgomery, AL 36130

WALTER S. TURNER
Chief Assistant Attorney General
250 Administrative Building
64 North Union
Montgomery, AL 36130

JAMES F. HAMPTON
Assistant Attorney General
250 Administrative Building
64 North Union
Montgomery, AL 36130

Counsel for Petitioner

INDEX

	Page
Citations	ii
Statement of the Case	1
Argument in Opposition to the Granting of the Writ	2
Conclusion	4
Certificate of Service	6

CITATIONS

Page

Bishop v. United States, 350 U.S. 961, 100 L.Ed. 835, 76 S.Ct. 440 3

Dusky v. United States, 362 U.S. 402, 4 L.Ed.2d 824, 80 S.Ct. 788 ..... 3, 4

Edgerson v. State, *53* Ala. App. 581, 586, 302 So.2d 556, 560 (1974) 3

Pate v. Robinson, 383 U.S. 373, 15 L.Ed.2d 815, 86 S.Ct. 836 (1966) 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO.

PEGGY JEAN THOMPSON,
PETITIONER,

VS.

STATE OF ALABAMA,
RESPONDENT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Comes now the State of Alabama by and through the Attorney General of Alabama and respectfully asserts that the Petition for Writ of Certiorari is due to be dismissed and that this matter should not be reviewed by this Honorable Court.

STATEMENT OF THE CASE

This case arose from the Circuit Court of Madison County, Alabama after the Petitioner was convicted therein for the offense of manslaughter in the first degree with punishment set at five years in the penetentiary.

The appeal of that conviction resulted in a remandment by the Court of Criminal Appeals back to the Circuit Court with an order requiring that a jury be impaneled to determine whether the petitioner had been competent to stand

trial. The conviction of the petitioner was suspended pending the determination made after remandment.

The case was returned to Madison County where a jury was impaneled. Evidence was offered by the petitioner to the effect that the petitioner was suffering from amnesia for a period of time surrounding the death of her husband. Expert testimony was offered to show this amnesic condition. However the petitioner's own experts admitted that at the time of trial the petitioner understood the nature of the proceedings against her and had a rational understanding of what was going on. Further those witnesses testified that the petitioner at the time of her trial was able to participate in the conduct of her defense in a rational manner.

The petitioner was adjudged competent at the time of her original trial and conviction by the Madison County Circuit Court.

The petitioner appealed this finding to the Alabama Court of Criminal Appeals. The Alabama Court of Criminal Appeals affirmed in an opinion issued July 25, 1978. Application for rehearing was denied in a second opinion by the Alabama Court of Criminal Appeals issued August 29, 1978. Application for writ of certiorari to the Alabama Supreme Court was denied without opinion on November 22, 1978.

ARGUMENT IN OPPOSITION TO THE GRANTING OF THE WRIT

1. The decisions and rulings of the Alabama Courts concerning the question of the petitioner's competency to stand trial is in complete accord with the decisions of this Honorable Court. There is no showing of any violation of rights of the petitioner under the Fifth, Sixth or Fourteenth Amendments of the United States Constitution.

Quite clearly the decision in the case at bar rendered by the Appellate Courts of Alabama holding that the petitioner was competent to stand trial are in compliance with the decisions of this Honorable Court.

The petitioner alleges as grounds for granting this writ that a person must not be convicted of a crime while he is incompetent to stand trial. In support of that general principle (with which the Respondent has no argument) the petitioner cites *Pate v. Robinson*, 383 U.S. 373, 15 L.Ed. 2d 815, 86 S. Ct. 836 (1966); and *Bishop v. United States*, 350 U.S. 961, 100 L.Ed. 835, 76 S. Ct. 440. Certainly any defendant has such a right. Further the respondent agrees with the petitioner in his argument that *Dusky v. United States*, 362 U.S. 402, 4 L.Ed. 2d 824, 80 S. Ct. 188, defines somewhat the extent of protection for persons found incompetent.

Even in the cases cited and relied on by the petitioner the test for a determination of competency is laid down as follows:

> "but that the test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding — and whether he has a rational as well as factual understanding of the proceedings against him." (*Dusky*, supra at 4 L.Ed. 2d 825)

This test laid down in *Dusky*, supra, is followed throughout this country by courts including the Alabama Courts. See *Edgerson v. State*, 53 Ala. App. 581, 586, 302 So. 2d 556, 560 (1974).

The petitioner has asserted various arguments to the theory that this petition should be granted. The fact remains that the Alabama Court of Criminal Appeals applied the test of *Dusky*, supra, and found that the Petitioner had been lawfully adjudged competent to stand trial.

The respondent does not now intend in this brief to argue the merits of this issue. The respondent would point out that the decision in this case by the Alabama Court is not in conflict with the decisions of this Honorable Court. This fact is clearly evidenced by the specific findings of the Alabama Courts and their reliance on the testimony of defense experts. (These opinions and this testimony are set out in the appendix of petitioner's brief) A close examination re veals no conflict in decisions.

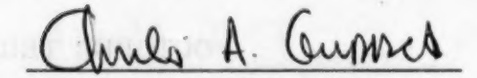
Clearly the decision below was correct in its holding as well as its interpretation and application of *Dusky*, supra, to the case at hand. Further it should be noted that this case contains specific expert testimony indicating in the words of the *Dusky*, supra, test that the petitioner was competent. Thus the holding below has an insignificance effect on the general Constitutional Principles. This is especially true in light of its consistency with other recent holdings.

It must be said then that this petition is due to be denied.

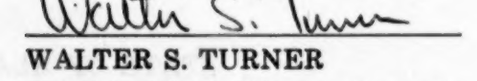
CONCLUSION

Based on the above showing that the holding by the Alabama courts in this cause is not in conflict with the decisions of this Honorable Court it is respectfully urged that the Petition for Writ of Certiorari is due to be denied.

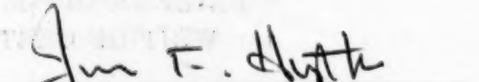
Respectfully submitted,



CHARLES A. GRADDICK
Attorney General,
State of Alabama



WALTER S. TURNER
Chief Assistant Attorney General



JAMES F. HAMPTON
Assistant Attorney General on
the Brief

COUNSEL FOR RESPONDENT

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No.

PEGGY JEAN THOMPSON,

Petitioner

v.

STATE OF ALABAMA,

Respondent

BRIEF IN OPPOSITION TO
WRIT OF CERTIORARI

AFFIDAVIT OF PROOF OF SERVICE

State of Alabama Montgomery County

I, the undersigned, Assistant Attorney General of Alabama, 64 North Union, Montgomery, Alabama 36130, hereby certify that I have deposited for service three (3) printed copies of a brief in opposition to the Writ of Certiorari to the Honorable Earl E. Cloud, Suite 368, Central Bank Building, Huntsville, Alabama 3580, and forty printed copies to the Clerk of the Supreme Court of the United States.

This the 21st day of March, 1979.

Walter S. Turner

WALTER S. TURNER
Chief Assistant Attorney General
64 N. Union
Montgomery, Alabama

Sworn to and subscribed before me the undersigned, this the 21st day of March, 1979.

Cynthia F. Sherman

Cynthia F. Sherman
Notary Public